

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TIMOTHY HAROLD AMBROSE §
v. § CIVIL ACTION NO. 6:07cv564
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Timothy Ambrose, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Ambrose states that he was convicted of sexual assault of a child in the 114th Judicial District Court of Smith County, Texas, on November 27, 2006, receiving a sentence of 18 years in prison. He had originally received deferred adjudication on January 3, 2003, but this status was revoked in November of 2006. He did not take a direct appeal, but sought habeas corpus relief in state court following the revocation of his deferred adjudication.

Ambrose complains that he received ineffective assistance of counsel in various particulars, that the trial court erred in not holding a separate sentencing proceeding, the indictment was defective, and there was insufficient evidence to support the conviction. The Magistrate Judge ordered the Respondent to answer, and Ambrose filed a response to the answer. The Magistrate Judge also received and reviewed copies of the state court records.

After such review, the Magistrate Judge issued a Report on June 3, 2008, recommending that the petition be dismissed. The Magistrate Judge also recommended that Ambrose be denied a certificate of appealability *sua sponte*. After obtaining an extension of time, Ambrose filed objections to the Magistrate Judge's Report on September 8, 2008.

In his objections, Ambrose does not directly address the Magistrate Judge's proposed findings or conclusions. Instead, he essentially reiterates the same claims which he presented to the Court. He says that the Magistrate Judge "has in part erroneously overlooked certain articles of Petitioner's case that need to be viewed and considered for due process of law," but is not clear what these are; he says that his attorney's performance "fell beyond [sic] legal profession's maintenance of standards which justify the law's presumption of counselor's fulfillment of the essential role of life, in life, through the adversarial process that the Constitution envisions," and argues that his attorney "has been found lacking substantially with Petitioner's case of the basic duties representation entails." The Magistrate Judge carefully analyzed all of Ambrose's claims and determined them to be without merit, and nothing which Ambrose says in his objections shows that the Magistrate Judge's proposed findings or conclusions were in error.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original petition, the answer filed by the Respondent, the Petitioner's response thereto, the state court records, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Timothy Ambrose is hereby denied a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby
DENIED.

SIGNED this 12th day of September, 2008.

A handwritten signature in black ink, reading "Michael H. Schneider". The signature is written in a cursive style with a horizontal line underneath it.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE